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NIAGARA ESCARPMENT COMMISSION

CONSULTATION PROTOCOL FOR RADIOCOMMUNICATION AND BROADCASTING ANTENNA SYSTEMS IN THE NIAGARA ESCARPMENT PLAN AREA

Part 1 – Purpose

This Protocol addresses the procedure, as outlined in the July 2014 Industry Canada bulletin *CPC-2-0-03 Issue 5*, for consulting land use authorities respecting proposals for radiocommunication and broadcasting antenna systems as governed under the federal *Radiocommunication Act*. This Protocol also recognizes the Joint Antenna System Siting Protocol developed by the Federation of Canadian Municipalities (FCM) and the Canadian Wireless Telecommunications Association (CWTA), which acknowledges the importance of local consultation, local land use preferences, and visual aesthetics in the siting of wireless antenna systems. This Protocol applies to all radiocommunication and broadcasting services including Personal Communications Services (PCS), cellular, fixed wireless, land mobile, wireless internet systems, licence exempt and amateur radio operators.

Part 2 – The Niagara Escarpment Plan

The role of the Niagara Escarpment Commission (NEC) is to uphold the purpose of the Niagara Escarpment Plan, which is to maintain the Niagara Escarpment and lands in its vicinity substantially as a continuous natural environment, and to ensure that only such development occurs as is compatible with that natural environment. The objectives of the Plan include maintaining and enhancing the open landscape character of the Niagara Escarpment by preserving the natural scenery, and protecting unique ecological and historic areas. In order to fulfil these objectives, the NEC must assess the visual and environmental impact of any development proposal within the Niagara Escarpment Plan (NEP) Area.

Given the prominence of radiocommunication towers and antennas on the landscape, the NEC expects a proponent to take all reasonable steps to avoid the NEP Area. Where this is not possible, the proponent should minimize the visual impacts on the Escarpment's attractive features, scenery and open rural landscape, and to preserve the Escarpment's natural environment.

Part 3 – Existing Niagara Escarpment Commission Protocols

The Niagara Escarpment Commission (NEC) has an operating protocol approved on November 29, 2001. A draft update to this protocol was prepared in 2009 and circulated to relevant stakeholders for review, and was approved by the NEC in January 2013. The September 2014 update to this Protocol reflects changes made to Industry Canada's Antenna Tower Siting Procedures in July 2014.

Part 4 – Application of Protocol

Pursuant to *CPC-2-0-03 Issue 5*, this Protocol applies to any proponent who plans to install or undertake modifications to a radiocommunication or broadcasting antenna system regardless of the type of installation or service in the Development Control Area of the NEP. The Protocol also clarifies the NEC's procedure for commenting on facilities proposed for areas of the NEP outside of Development Control Areas.

The Protocol also sets out exclusions to the consultation process for undertakings that are considered minor.

Part 5 - Objectives

The objectives of this Protocol are:

1. To recognize the need for land use authorities and the public to review radiocommunication and broadcasting antenna facilities in the NEP Area, while providing a consistent and timely process for the proponents of such facilities.
2. To provide for the protection of the NEP Area in accordance with the Designations, permitted uses, and policies of the Niagara Escarpment Plan, while at the same time meeting the need for wireless coverage for emergency, business and personal communication within the NEP Area and land in its vicinity.
3. To encourage proponents to locate new facilities in locations that result in the least visual, environmental, and cultural impacts on the Niagara Escarpment.
4. To encourage proponents to mitigate the impacts of new facilities through careful site planning, compatible design, buffering, camouflaging and landscaping.
5. Where appropriate, encourage co-location of facilities, including the use of existing buildings and structures, where they can accommodate new towers or antennas.
6. To recognize the mandate of Industry Canada in matters relating to the siting of radiocommunication and broadcasting antenna facilities.

Part 6 – Consultation Process

This Protocol addresses the consultation procedures to be followed for radiocommunication and broadcasting antenna projects in the NEP Area, as follows:

- Projects within the Development Control Area of the NEP;
- Projects within the NEP Area, but outside of Development Control Areas;
- Projects within the NEP Area, but considered exempt under Industry Canada's Exclusion List (see Section 6.4).

The NEC's consultation process is summarized in a flow chart in Appendix 3.

6.1 Pre-Consultation

Proponents are required to consult with the NEC in advance of submitting a Development Permit Application.

The objectives of pre-consultation are:

1. To determine if the project is excluded from consultation under *CPC-2-0-03* criteria, or if it still requires consultation in consideration of local circumstances;
2. To determine if the NEC or local municipality will lead the review process, and if other approval authorities need to be consulted;
3. To discuss the suitability of the proposed site and design in the NEP Area, including what alternatives were considered. Where Commission Staff have an initial concern with the proposed siting of the facility they will make known to the proponent alternative locations within the proponent's search area for consideration. Proponents will also be made aware of the NEP policies and Development Criteria applicable to the NEP Area, the *Site Selection and Design Guidelines* as set out in Appendix 1 and the NEC's requirements for photo simulations;
4. To identify any outstanding matters which may have to be addressed before a submission is formally received for consideration. This may include report clarifications, and additional studies or plans that should be submitted to complete an application for review and circulation.

6.2 Review Process for Projects in the Niagara Escarpment Development Control Area

6.2.1 Proposal Submission

Following pre-consultation, for those projects that are not exempt and are located within the Development Control Area of the NEP, the proponent will submit to the NEC the completed form *Proposal for a Radiocommunication or Broadcasting Facility in the Area of the Niagara Escarpment Plan* (see Appendix 4). To be deemed complete, a proposal submission must also contain the required documents as listed in Appendix 2 –

Proposal Submission Requirements, and a description of how the proponent has taken the *Site Selection and Design Guidelines* (see Appendix 1) into account.

6.2.2 Consultation Process

Once the submission contains all of the required elements and is therefore deemed complete, the NEC will commence the 120-day consultation and review period. During this period the following matters related to consultation shall occur:

1. A file shall be established at the NEC Office and be available for public and agency viewing. The proponent shall be informed that such a file has been established and be asked to post a clearly visible notice at the development site noting that a submission has been made for a radiocommunication and broadcasting antenna facility.
2. The relevant information in the submission will be circulated by the NEC to the municipality, other relevant land use authorities (e.g., Provincial Ministry or Conservation Authority) and organizations or stakeholders that may have an interest in the submission (e.g., Bruce Trail Conservancy).
3. In accordance with NEC policy, the submission will be circulated by the NEC to assessed landowners within a minimum of 120 metres of the property line of the proposed site. Assessed landowners will be invited to comment on the proposal.
4. All comments will be requested to be received by the NEC within a 35-day period and will be made available to the proponent. Requests for additional time shall be discouraged but will be discussed with the proponent (and if necessary Industry Canada) before any extension is granted.
5. The proponent shall respond in writing, to landowners who submit comments, within 60 days of receipt of the comment from the NEC. A copy of the response shall be provided to the NEC. The response shall address all reasonable and relevant concerns identified in the comments. The commenter has 21 days from the date of the proponent's correspondence to reply to the response in writing directed to the NEC and the proponent.
6. The proponent will publish a notice in at least one local newspaper for any new or modified facility that is proposed to be more than 30 metres in height. The notice must indicate where materials respecting the proposal and its particulars may be reviewed and will invite comments within 35 days to the proponent and the NEC. Any tower or antenna on an existing building or structure added as an adaptive use will also require newspaper notice if the tower or antenna adds more than 25 percent to the original height of a tower or antenna on a building or structure.
7. The proponent may, at its discretion, hold public open houses where the NEC and other applicable land use authorities shall be invited to attend and observe.

6.2.3 NEC Staff Review and Recommendations

1. Following the submission of comments, NEC staff will, where no objections have been received, or where matters have been resolved to staff's satisfaction, prepare a letter of concurrence setting out the terms and conditions of the land use approval and forward that letter to the proponent and to Industry Canada. Copies will also be sent to any agency or person who provided written comments on the submission.
2. Where objections from consulted agencies and/or the public have been received which cannot be resolved, and/or NEC staff is not satisfied that the project meets NEP objectives and tests of the Protocol, and it appears to NEC staff that concurrence will not be granted, NEC staff will provide the proponent with a letter detailing the reasons for the pending non-concurrence recommendation. The proponent will then be invited to meet with NEC staff to discuss reasonable alternatives, and to amend its application to address the issues identified. Where these discussions do not lead to concurrence with the proposal, and at the option of the proponent a Planning Report will be prepared for Commissioners' consideration at a regular NEC meeting. This report will be forwarded to the proponent and any municipality, agency or person who provided comment and they will be invited to attend the meeting to observe and/or make submissions on the report recommendations.
3. The Commission's recommendation, either concurrence (with or without conditions) or non-concurrence, will be forwarded to the proponent and Industry Canada, and any municipality, agency or person who provided comment or attended the meeting to observe and/or make submissions.
4. If dispute resolution is required, NEC staff will attend sessions or respond to matters relating to the Commission recommendation and, if required, make further submissions or comments to Industry Canada on the acceptability of the facility.
5. If the tower is not constructed within three years of the date of concurrence, the proponent will need to conduct a new consultation if it still wishes to proceed.

6.3 Review Process for Projects in Niagara Escarpment Plan Areas Outside of Development Control Areas

On lands within the NEP Area but outside the Development Control Area, the NEC will follow the approved protocol of the municipality or land use authority with zoning jurisdiction. NEC staff will provide comments on proposals, but will defer the final decision to the municipality. If dispute resolution is required the NEC may participate depending on the nature of the NEC's original comments.

6.4 Review of Exempt Projects in the Niagara Escarpment Plan Area

As per Industry Canada criteria, some projects are exempt from the requirement to consult with land use authorities and the public. However, some structures typically excluded by Industry Canada may still require consultation if they are not compatible with the planning priorities, visual aesthetics, or other characteristics of the proposed site. These include non-tower installations, e.g., flag poles, rooftops, lamp posts, water towers, or height increases of less than 25 percent. Proponents are requested to

consult with Commission staff to ensure that the proposal is compatible with the character of the Escarpment environment, including existing buildings and structures, and the Escarpment's open landscape character, even though it may be excluded from consultation under Industry Canada criteria.

If staff has no concerns with the proposed project, NEC staff shall provide a written acknowledgement of the exemption within fifteen (15) days of pre-consultation. Such projects will not require further submissions or public consultation or review under this Protocol.

If it is found that an exempt project is not in accordance with the objectives of this Protocol, staff will recommend that the Commission object to the proposal, and request that Industry Canada engage in the process.

For exempt projects, proponents are still requested to consider and incorporate the *Site Selection and Design Guidelines* included in Appendix 1.

Part 7 – Dispute Resolution

The Industry Canada dispute resolution process does not provide for the general public to have a right of appeal or petition where the project is opposed or challenged. The proponent or a land use approval authority (i.e., the NEC under this Protocol) may in writing ask Industry Canada to approve, reject or modify the telecommunications undertaking. Industry Canada, on the basis of the submissions by parties, may make a final decision or refer the matter for further negotiation and/or dispute resolution. Should a resolution of issues not be possible between the parties, Industry Canada will make the final decision.

Matters which cannot be part of the dispute include:

- The proponent's level of telecommunications service, where unrelated to installations.
- Possible impacts on property value or taxes.
- The reform of existing law or regulations including standards which relate to health and safety, legally applicable building by-laws and radio frequency exposure limits.

Part 8 – Compliance and Enforcement

Approval of a radiocommunication and broadcasting antenna facility is exclusively the responsibility of Industry Canada. Applicable land use authorities have limited enforcement capability and jurisdiction, since these facilities are regulated federally under the *Radiocommunication Act*. A failure to follow the Protocol that results in the construction or modification of a facility without approval or in a manner contrary to the decision arrived at under the Protocol will be referred to Industry Canada for action and penalties.

Any public complaints regarding compliance and enforcement will be directed to Industry Canada with a copy to the proponent.

Appendices

1. Site Selection and Design Guidelines
2. Proposal Submission Requirements
3. Flow Chart: Consultation Protocol for Telecommunication Facilities Proposals in the Niagara Escarpment Plan Area
4. Application Form (revised): Proposal for a Radiocommunication or Broadcasting Antenna Facility in the Area of the Niagara Escarpment Plan

Site Selection and Design Guidelines

These guidelines have been prepared in consideration of Industry Canada criteria, and in accordance with the FCM-CWTA Joint Protocol recommendation that land use authorities develop local guidelines that fully express location and design preferences.

1. Site Selection Considerations - General

- The proponent should take all reasonable steps to avoid the NEP Area. The proponent should minimize the visual impacts on the Escarpment's attractive features, scenery and open rural landscape, and to preserve the Escarpment's natural environment;
- Every effort shall be made to co-locate or reuse existing facilities except in cases where co-location or reuse would result in unacceptable visual impacts;
- The use of existing buildings and structures (e.g., silos, church steeples, water towers, telephone poles, clock towers) may be preferred over establishing new structures. Where possible, new facilities using existing buildings or structures should be hidden within them, or designed so that radiocommunication and broadcasting equipment is not obvious;
- The height of any new facility shall be kept at a minimum, and where the use of Escarpment lands is seen to be the only alternative, consideration should be given to more towers at a lower height rather than a single higher tower. The objective is to achieve the least visual impact on the Escarpment's landscape while still accommodating radiocommunication and broadcasting needs;
- New lots to accommodate radio communications and broadcasting facilities will not be permitted.

2. Site Selection Considerations - Niagara Escarpment Plan Designations

- **Escarpment Natural Areas** should not be used for new radiocommunication and broadcasting sites. Such uses are not suited to this Plan Designation because of the presence of natural hazards associated with Escarpment land forms and the environmental and visual sensitivity of such lands;
- **Escarpment Protection Areas** should be avoided when new radiocommunication and broadcasting sites are considered. Such uses are not suited to this Plan Designation because these lands are intended to buffer the Escarpment Natural Area, contain sensitive or regionally significant cultural and natural heritage features, scenic landscapes and areas which are identified for their visual importance in maintaining the rural landscape;
- **Escarpment Rural Areas**, where there is no alternative, may be considered for new radiocommunication and broadcasting sites provided such facilities locate in

areas that minimize the impact on natural features, the open rural landscape and any adjacent Escarpment Natural or Protection Area Designations;

- The prominent Escarpment slope and lands along the brow or in the vicinity of the toe should be avoided in **Escarpment Recreation Areas** where the radiocommunication and broadcasting antenna facilities will be highly visible, involve attractive vistas, significant lookouts, or are located in proximity to natural heritage features. Where unavoidable, the mid-slope siting of facilities is preferred over those sites along the brow or at the toe that would protrude above the Escarpment or obscure the feature from below;
- Lands designated as **Public Lands in the Parks and Open Space System** may be used for new radiocommunication and broadcasting antenna facilities provided the NEC concurs in accordance with this protocol;
- Lands in **Mineral Resource Extraction Areas** may be considered for new radiocommunication and broadcasting antenna facilities provided such facilities do not interfere with aggregate removal or progressive rehabilitation. The impact on adjacent Niagara Escarpment Plan Designations should be considered;
- Proponents are encouraged to locate new facilities in the built portions of **Escarpment Recreation Areas, Urban Areas and Minor Urban Centres**. In such areas new facilities are generally directed to lands already established as or designated for industrial, commercial, institutional, major resort and utility uses. Residential and historic areas should be avoided.

3. Site Planning Considerations

- Setbacks from environmental features, sensitive ecologic areas, scenic landscapes and cultural heritage features, as may be identified in the planning studies accompanying any proposal for a new facility, shall be incorporated into the site plan;
- The design of any new towers and associated equipment (including shelters and lockers at the tower base) shall be as compatible as possible with the surrounding natural and cultural landscape. In built areas the protection or sympathetic blending of facilities with the surrounding architectural character and urban form is encouraged;
- Specific mitigation measures to reduce impacts and increase compatibility at the site level must be considered in all new proposals. Such measures include:
 - The type of tower structure, its mass and height (e.g., monopole, lattice, guyed, flagpole type, which will be dependent on area characteristics),
 - Painting the tower a neutral colour or a colour that blends best in a particular setting,
 - Providing strategic landscaping and native plantings in proximity to the tower or at key points around the base,
 - Towers should be unlit unless such lighting is required for safety reasons (e.g., by Transport Canada),

- Fencing (preferably wooden) should be used around the tower base to hide any equipment shelters or lockers,
 - Access to the site (e.g., lane, roadway) should be designed to cause the least environmental disruption, should a new access be required;
- Any signage shall be limited to operator identification, property warning and contact information, and shall generally be posted on the fencing at the base of the tower, or if the site is gated, on the entrance to the site. Signage will be unlit and be limited to one sign of a size of not more than 0.9 square metres as prescribed in the NEP, unless different safety regulations or Federal requirements must be met or unless used for the purposes of stealth design. In no circumstances shall advertising or third party signs be permitted on the facility or site without Commission approval.

Proposal Submission Requirements

1. The proponent shall provide the information in a manner that is efficient for copying and making the materials available to the public and other agencies for information and circulation.
2. Proponents must justify why the antenna/tower facility must be located with the NEP Area, including what alternative locations were considered and why they were ruled out.
3. Proponents must demonstrate that existing structures cannot be used and why these were rejected or found unsuitable.
4. Mapping showing adjacent features and uses, site plans with setbacks, construction drawings, elevations, engineering details, photographs, and landscaping design information, including fencing, lighting and colour schemes must be provided with the application form.
5. The proponent must demonstrate how the Development Criteria in Part 2 of the NEP are satisfied. These Criteria deal with a variety of situations, not all of which will apply to all sites, including:
 - considerations related to land use compatibility,
 - the avoidance of visual impacts,
 - the protection of steep slopes and ravines,
 - the maintenance of water resources,
 - the preservation of woodlots and forests,
 - the protection of wildlife habitat,
 - the avoidance of good agricultural land,
 - maximizing the protection of heritage buildings and sites,
 - the avoidance of archaeological sites and heritage features,
 - Limiting impacts on public parks and open space including the Bruce Trail.
6. In cases where there may be impacts on any of the above, the proponent must demonstrate how setbacks, design elements, or other mitigation measures will be utilized to satisfy the Development Criteria of the NEP.
7. All applications shall be accompanied by photographic simulations based on mutually-agreed upon view points illustrating the anticipated impacts of the proposed facility on the Escarpment landscape. The NEC may also request a report detailing how the facility has been located or designed to minimize the effects on scenic vistas, attractive viewsheds and the rural cultural features associated with the open rural landscape of the Escarpment. The Visual Impact Assessment Guidelines of the Niagara Escarpment Commission should be used to develop such report where applicable.

APPENDIX 3

Consultation Protocol for Telecommunications Facilities Proposals in the Niagara Escarpment Plan Area

